

1 Lisa S. Kantor, Esq. State Bar No. 110678
e-mail: lkantor@kantorlaw.net
2 Elizabeth K. Green, Esq. State Bar No. 199634
e-mail: egreen@kantorlaw.net
3 KANTOR & KANTOR, LLP
19839 Nordhoff Street
4 Northridge, CA 91324
Telephone: (818) 886-2525
5 Facsimile: (818) 350-6272

6 Attorneys for Plaintiffs,
JUDIE DEPESA AND GABRIELLE DEPESA
7

8 Brian F. Rowe, Esq. (State Bar No.: 168792)
BLUE CROSS OF CALIFORNIA
9 21555 Oxnard Street, First Floor
Woodland Hills, CA 91367
10

Attorneys for Defendant
11 ANTHEM BLUE CROSS LIFE AND HEALTH
INSURANCE COMPANY
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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO
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18 JUDIE DEPESA AND
GABRIELLE DEPESA,
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20 Plaintiffs,

21 vs.

22 ANTHEM BLUE CROSS LIFE AND
23 HEALTH INSURANCE COMPANY,
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25 Defendant.
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CASE NO: 3:10-CV-02323-JCS
(Magistrate-Judge Joseph C. Spero,
Courtroom "A", 15th Floor)

JOINT STATUS REPORT AND
REQUEST FOR CONTINUANCE OF
INITIAL CASE MANAGEMENT
CONFERENCE AND ORDER

Complaint Filed: May 27, 2010
CMC: September 3, 2010

Pursuant to Federal Rules of Civil Procedure, Rules 16 and 26(f), this Court's Standing Order, and the Local Rules of this Court, Plaintiffs Judie Depesa and Gabrielle Depesa (hereinafter "Plaintiffs") and Defendant Anthem Blue Cross Life and Health Insurance Company (hereinafter "Defendant"), by and through their respective counsel of record, hereby submit this Joint Status Report, following the meeting of counsel as required by Rule 26(f).

(A) Brief Summary of the Case.

This is an ERISA case brought by Judie DePesa and her daughter, Gabrielle DePesa, to recover benefits for residential treatment for Gabrielle. Gabrielle is 22 years old and suffers from anorexia nervosa, autistic spectrum disorder, obsessive-compulsive disorder and superior mesenteric artery syndrome.. Superior mesenteric artery (SMA) syndrome is a very rare, life-threatening gastro-vascular disorder (there are only 400-500 cases in country) characterized by a compression of the third portion of the duodenum by the abdominal aorta and the overlying superior mesenteric artery. Gabrielle underwent surgery in October 2007 to create a bypass hook-up.

Gabrielle was admitted to Monte Nido Treatment Center in Agoura, California for the treatment of Anorexia Nervosa on January 26, 2010. Defendant approved payment for such treatment from January 26, 2010 through March 28, 2010. On March 31, 2010, Defendant denied authorization for continued residential treatment on the ground that Gabrielle did not meet the guidelines for residential treatment starting on March 29, 2010. Plaintiffs appealed this decision. On April 1, 2010, Defendant upheld its prior denial.

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1 **(B) Status of Service of Process**

2 All defendants have been served and have answered the complaint.

3 **(C) Possible Joinder of Additional Parties**

4 The parties do not anticipate joining any additional parties.

5 **(D) Contemplated Amendments to the Pleadings**

6 The parties do not anticipate amending the pleadings

7 **(E) Statutory Basis for Jurisdiction and Venue**

8 This action is brought under 29 U.S.C. §§ 1132(a), (e), (f) and (g) of the
 9 Employee Retirement Income Security Act of 1974 as it involves a claim by
 10 Plaintiffs for employee benefits under an employee benefit plan regulated and
 11 governed under ERISA. Jurisdiction is predicated under these code sections as well
 12 as 28 U.S.C. § 1331 as this action involves a federal question. Plaintiffs were at all
 13 times relevant, residents of the County of Santa Cruz, State of California.

14 **(F) Anticipated Discovery and the Scheduling**

15 Plaintiffs have served their Initial Disclosures. Defendant anticipates serving
 16 its Initial Disclosures by the end of August.

17 Plaintiff alleges that she is entitled to discovery aimed at completing the
 18 applicable claim file(s) (if necessary) and to explore Defendant's potential conflict of
 19 interest in denying Plaintiff's claim for benefits. In *Abatie v. Alta Health & Life Ins.*
 20 *Co.*, 458 F.3d 955 (9th Cir. 2006), the Ninth Circuit affirmed *Tremain v. Bell*
 21 *Industries*, 196 F.3d 970 (9th Cir. 1999), and expressly held that evidence outside of
 22 the administrative record is permitted in ERISA actions to aid the court in
 23 determining the "nature, extent and effect" of an administrator's structural (inherent)
 24 conflict of interest on the claims decision. *Id.* at 970. Accordingly, Plaintiff may
 25 conduct discovery and present evidence to the Court regarding Defendant's conflict
 26 of interest, such as "any evidence of malice, of self-dealing, or of a parsimonious
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claims-granting history,” “inconsistent reasons for denial,” inadequate investigation of a claim or failing to ask the Plaintiff for necessary evidence, failing “to credit a claimant’s reliable evidence,” and making decisions against the weight of evidence in the record. *Id.* at 968.

The Supreme Court endorsed the *Abatie* approach in *Metropolitan Life Ins. Co. v. Glenn*, 128 S. Ct. 2343 (2008), holding that a conflict of interest “should prove more important (perhaps of great importance) where circumstances suggest a higher likelihood that it affected the benefits decision, including, but not limited to, cases where an insurance company administrator has a history of biased claims administration.” *Id.* at 2351.

Defendant disputes Plaintiff’s allegation of potential conflict of interest affecting the benefit determination in this matter. Defendant asserts that all discovery in this lawsuit should be kept within the administrative record. The correct standard of review to be applied in this case is the arbitrary-and-capricious standard. In *Leger v. Tribune Company Long Term Disability Benefit Plan*, 557 F.3d 823 (2009) which distinguished the holding in *Metropolitan Life Ins. Co. v. Glenn*, the court found that Metropolitan did not create a new standard of review, and that any potential evaluator/payor conflict was just one of many factors to be weighed. *Leger* at 831.

(G) Deadline for Non-Discovery Motions

The parties propose that all non-discovery motions be brought on or before February 1, 2011.

(H) Proposed Dates for Trial and Pre-trial Conference

The parties request the simultaneous exchange of Opening Trial Briefs followed by Responding Trial Briefs for this matter. The parties propose the Opening Trial Briefs be filed by March 28, 2011, and the Responsive Trial Briefs be filed by April 11, 2011. The parties propose a bench trial on April 18, 2011.

(I) Special Procedures Such As Reference to Magistrate Judge

The parties have consented to proceed before this Magistrate Judge.

(J) Modifications to Pre-trial Procedures

The parties assert this matter is appropriate for a waiver of the Court's pre-trial requirements, pursuant to Ninth Circuit precedent. The matter should be decided on the basis of the parties' trial briefs, the claim file, and evidence submitted by plaintiff for consideration under *Nolan v. Heald College*, 551 F.3d 1148 (9th Cir. 2009).

(K) Related Cases

The parties are not aware of any related cases.

(L) Prospects for Settlement

The parties have already engaged in settlement discussions and believe that they will be able to settle this matter on their own. The records are being reviewed as treatment is ongoing in an outpatient setting in various levels of intensity. Therefore, the parties request that the September 3, 2010 Initial Case Management Conference be continued for sixty days.

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(M) Other Matters Conducive to Just and Expeditious Disposition

The parties are aware of no such issues which presently need resolution.

DATED: August 24, 2010

KANTOR & KANTOR, LLP

BY: /s/ Lisa S. Kantor

Lisa S. Kantor
Elizabeth K. Green
Attorneys for Plaintiffs
Judie Depesa and
Gabrielle Depesa

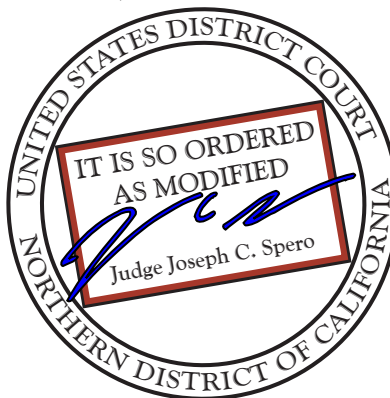
DATED: _____

BY: Brian F. Rowe on behalf of
Brian F. Rowe
Attorneys for Defendant Brian F. Rowe
Anthem Blue Cross Life and
Health Insurance Company

IT IS HEREBY ORDERED that the case management conference is continued to November 5, 2010, at 1:30 p.m. The joint case management conference statement shall be due by October 29, 2010.

IT IS SO ORDERED.

Dated: August 27, 2010



JOINT STATUS REPORT